

1 Wm. Michael Whelan, Jr., ESQ. (CA Bar No. 112190)  
2 95 S. Market Street, Suite 300  
3 San Jose, California 95113  
4 (650) 319-5554 telephone  
5 (415)-522-1506 facsimile  
whelanlaw@gmail.com  
6 Attorney for Defendant  
7 SANFORD WALLACE  
8  
9  
10  
11

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

12 UNITED STATES OF AMERICA

13 Plaintiff,

14 vs.

15 SANFORD WALLACE,

16 Defendant.

Case Numbers:

CR-11-456-EJD

**SANFORD WALLACE'S  
SENTENCING MEMORANDUM and  
REQUEST FOR VARIANCE FROM THE  
GUIDELINE RANGE**

Date: June 13, 2016, 1:30 p.m.  
Courtroom: 1, 5<sup>th</sup> Floor  
Judge: Hon. Edward J. Davila

23 COMES NOW the defendant, Sanford Wallace, through his counsel Wm. Michael  
24 Whelan, Jr. and hereby submits his sentencing memorandum requesting a 24-month  
25 prison term, a downward variance of 9 months down from the low end of 33 months. The  
26 PSR "Recommendation" at page 3 of the USPO's Sentencing Recommendation also  
27  
28

1 requests 24 months, although the USPO requested 30 months (a 3 month variance) at page  
2 1.

3 Mr. Wallace further requests a 1-year term of supervised release, not 5 years as  
4 requested by the PSR. Mr. Wallace requests that the Court essentially give him  
5 supervised release “credit” for his past 5 years of perfect USPTS compliance.

6 Further, regarding resitution, the United States, by and through AUSA Susan  
7 Knight, will be adjusting down the restitution request from \$320,000.00 to \$310,628.55  
8 based on recent correspondence with the victim, Facebook.

9  
10 **Unresolved Objections in the PSR**

11 There are no truly unresolved objections to the final PSR. However, defense  
12 counsel initially objected to the understated language in the “Adjustment for Acceptance  
13 of Responsibility” section (now paragraph 35, page 13). The initial draft stated simply  
14 that the defendant “indicated that he would rely on the Plea Agreement for his Acceptance  
15 of Responsibility”. This statement was not entirely accurate. Defense counsel pointed  
16 out in his response/objection to the PSR Draft, that defense counsel did not reign in Mr.  
17 Wallace during the PSR interview. Defense counsel did not restrict Mr. Wallace from the  
18 detailed questions presented to him by the late and dearly-missed USPO BelOchi. She  
19 questioned Mr. Wallace extensively regarding his legal and illegal spamming activities  
20 since the late 90’s, and he answered those questions fully and straightforwardly. In  
21 response to this objection, the final PSR added, “He was, however, forthcoming during  
22 the presentence interview and candid with the probation officer.” This is an  
23 understatement.

24  
25 WM. MICHAEL WHELAN, JR.  
26 ATTORNEY AT LAW  
27 95 S. MARKET STREET, SUITE 300  
28 SAN JOSE, CALIFORNIA 95113  
(650) 319-5554

1                   **3553(a) Factors and Downward Variance Request**

2  
3                   There is another understatement in the PSR at page 5, "His USPTS supervision  
4                   officer reported that the defendant is compliant and reports as directed." This is true. But  
5                   put in further perspective, and a more favorable light, once Mr. Wallace was criminally  
6                   indicted, he "got the message" and became law-abiding. He requests that the Court  
7                   favorably consider as mitigating his almost 5 full years of stellar pretrial release  
8                   compliance in Las Vegas and perfect record of appearing on time for each and every  
9                   criminal case pretrial hearing.

10  
11                  The PSR describes multiple facts and circumstances of Mr. Wallace's personal  
12                  characteristics worthy of the Court's consideration. It was during the extensive, personal  
13                  and revealing PSR interview with USPO BelOchi, that it became obvious to both of us  
14                  that Mr. Wallace needed to be evaluated for obsessive compulsive features, Asberger's  
15                  Syndrome, and psychiatric history. Given the findings of defense expert psychiatrist Dr.  
16                  Norman Roitman, the defendant's 5 years of pretrial services compliance is all the more  
17                  extraordinary. It is for this reason, that the PSR statement, last sentence of page 24, is not  
18                  entirely true: "No set of orders or money judgments have dissuaded the defendant from  
19                  further engaging in his fraudulent conduct." That is true only of prior civil case orders  
20                  and money judgments. Since his criminal indictment and arrest on August 11, 2011, Mr.  
21                  Wallace ceased and desisted his fraudulent schemes. While the PSR partially  
22                  acknowledges that Mr. Sanford's learning disability, Asberger's symptoms, and  
23                  congenital minimal brain damage are mitigating, it does not acknowledge how, given  
24                  those limitations and his pre-indictment offense conduct, Mr. Wallace dramatically  
25  
26  
27  
28

1 responded with strict pretrial release compliance. This has been extraordinary, *not*  
 2 something that could be said “for the majority of defendants who appear before this  
 3 court”.

4       As in all cases post *Booker*, in choosing the particular sentence that complies with  
 5 the “overarching provision instructing district courts to ‘impose a sentence sufficient, but  
 6 not greater than necessary,’ to achieve the goals of sentencing,” [*Kimbrough v. United*  
 7 *States*, 128 S. Ct. 558 at 570 (2007)], the judge “shall consider”, among other provisions,  
 8 the “nature and circumstances of the offense” pursuant to 18 U.S.C § 3553(a)(1),  
 9 “seriousness of the offense” pursuant to 18 U.S.C § 3553(a)(2)(A), and “the need to avoid  
 10 unwarranted disparities among defendants with similar records who have been found  
 11 guilty of similar conduct” pursuant to § 3553(a)(6).

12       Section 3553(a)(1) is a “broad command to consider ‘the nature and circumstances  
 13 of the offense and history and characteristics of the defendant.’” *Gall v. United States*, 128  
 14 S. Ct. 586 at 596 n.6 (2007).

15       Section 3553(a)(2)(A) requires the judge to consider “the need for the sentence  
 16 imposed... to reflect the seriousness of the offense, to promote respect for the law, and to  
 17 provide just punishment for the offense.” The seriousness of the offense traditionally is  
 18 weighed by the degree of injury sustained by victims, the defendant’s motives, role in the  
 19 offense, and the existence, if any, of mental illness or cognitive impairment. Of note,  
 20 Congress believed that prison should generally be inappropriate in “cases in which the  
 21 defendant is a first offender, who has not been convicted of a crime of violence or an  
 22 otherwise serious crime.” 28 U.S.C. § 994(j).

1                   Conclusion  
2  
3  
4  
5  
6  
7

Mr. Wallace has learned his lesson. He has demonstrated that over the last 5 years of perfect USPTS compliance. He is now fully prepared to accept a federal prison sentence. A 24 month sentence, followed by one year of supervised release, would serve to appropriately reflect the seriousness of the offense, promote respect for the law, and prove just punishment.

8                   Respectfully submitted,  
9  
10                  Dated: June 6, 2016

11                  \_\_\_\_\_  
12                  /s/  
13                  WM. MICHAEL WHELAN, JR.  
14                  Attorney for Defendant Sanford Wallace  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WM. MICHAEL WHELAN, JR.  
ATTORNEY AT LAW  
95 S. MARKET STREET, SUITE 300  
SAN JOSE, CALIFORNIA 95113  
(650) 319-5554